

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THOMAS T. PROUSALIS, JR.,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.  
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16cv3349 (DLC)  
03cr01509 (DLC)

ORDER

USDC SDNY DOCUMENT ELECTRONICALLY FILED DLC # DATE FILED: 6/24/2016
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On June 16, 2004, petitioner Thomas Prousalis ("Prousalis") pleaded guilty to conspiracy to defraud the United States, manipulative and deceptive devices, and securities violations. On November 1, Prousalis was sentenced to 57 months of imprisonment, 3 years of supervised release, and was required to pay a special assessment of \$300 and restitution in the amount of \$12.8 million. Prousalis appealed his sentence, and the Second Circuit Court of Appeals dismissed the appeal on January 24, 2006 on the basis that Prousalis had waived his right to appeal.

On November 6, Prousalis filed his first habeas petition under 28 U.S.C § 2255. The Court denied the petition on August 24. Prousalis appealed the denial of his petition, and the Second Circuit Court of Appeals dismissed the appeal because Prousalis had not made a substantial showing of the denial of a constitutional right.

On June 13, 2011, the Supreme Court decided Janus Capital Grp., Inc. v. First Derivative Traders, 564 U.S. 135 (2011). On March 3, 2016, Prousalis filed a second habeas petition under § 2241 in the United States District Court for the District of Columbia. In his petition, Prousalis argues that his conviction must be vacated in light of Janus. On April 11, 2016, the court in the District of Columbia transferred the petition to this Court.

Pursuant to 28 U.S.C. § 2255(h),<sup>1</sup> "[a] second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals." 28 U.S.C. § 2255(h) Section 2244 provides that "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). When a petitioner files a successive habeas petition without first obtaining certification of the Court of Appeals, "the district court should transfer the petition or motion to [the Court of Appeals]

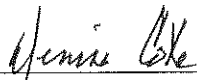
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<sup>1</sup> Although Prousalis brings his petition under § 2241, this does not relieve him of the requirement to seek certification from the Second Circuit to file a successive petition. See Adams v. United States, 372 F.3d 132, 136 (2d Cir. 2004) ("[T]he district court can treat the § 2241 petition as a second or successive § 2255 petition and refer the petition to this Court for certification.")

in the interest of justice." Corrao v. United States, 152 F.3d 188, 190 (2d Cir. 1998). The determination as to whether this successive petition may proceed because it is based on either newly discovered evidence or a new rule of constitutional law must be made by the Court of Appeals. 28 U.S.C. § 2255(h); Herrera-Gomez v. United States, 755 F.3d 142, 145 (2d Cir. 2014). Accordingly, it is hereby

ORDERED that Prousalis's March 3, 2016 petition shall be transferred to the Court of Appeals for the Second Circuit for treatment as a successive petition.

Dated: New York, New York  
June 24, 2016

  
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DENISE COTE  
United States District Judge

COPIES SENT TO

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